IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 5818 (S/S) 01

(Old no. 11286 of 1992)

Dharm Singh S/o Sri Harphool Singh,
Assistant Teacher in Kisan Vidhyalaya
Inter College, Laksar,
District Haridwar. ------Petitioner.

Vs.

1. District Inspector of Schools, Haridwar,
2. Deputy Director of Education, Meerut,
3. Committee of Management,
   Kisan Vidhyalaya Inter College, Laksar,
   District Haridwar, through its Manager,
4. Mahendra Pal Singh S/o Sri Shish Ram,
   R/o village Mubarakpur, P.O. Gangoh,
   District Saharanpur,
   At present posted as Asstt. Teacher in,
   Kisan Vidhyalaya Inter College, Laksar,
   District Haridwar. -------Respondents.

Sri M.S. Tyagi, learned counsel for the petitioner.
Sri Paresh Tripathi, learned Brief Holder for State of Uttarakhand/ respondent nos. 1 & 2,
Sri A.V. Pundir, learned counsel for the respondents no.3 and
Sri Rajendra Singh, learned counsel for respondent no.4.

Hon'ble M.M. Ghildiyal, J.

Heard Sri M.S Tyagi, learned counsel for the petitioner. Sri Paresh Tripathi, learned Brief Holder for State of Uttarakhand/respondent nos. 1 & 2, Sri A.V. Pundir, learned counsel for respondent no. 3 and Sri Rajendra Singh, learned counsel for respondent no.4.

The petitioner has preferred the instant writ petition for the following reliefs:-

(a) Issue a writ of certiorari quashing the impugned order dated 17.03.1992 (annexure-8) and impugned resolution dated 27.12.1991 (annexure-6) passed by opposite parties nos. 1 & 3 respectively,

(b) Issue a writ, order or direction in the nature of mandamus directing the opposite parties not to give

any effect to the order dated 17.03.1992 as well as the resolution dated 27.12.1991,

(c) Issue a writ, order or direction in the nature of mandamus directing the opposite parties nos. 1,2 & 3 to promote the petitioner to the post of Lecturer,

(d) Issue any other writ, order or direction which it may deem fit and proper in the circumstances of the case,

(e) Award cost of the petition to the petitioner against the contesting opposite parties.

It is submitted that the petitioner was appointed as C.T. Grade Teacher on 8th October 1968 against a substantive vacancy. In the year 1982 the petitioner was promoted in L.T. Grade. On 30th June 1991 one Sri Bhagat Ram Mittal working as Lecturer in the College, retired from his services and the vacancy of Lecturer arose in the Institution. In the year 1978 the respondent no. 4 joined the Institution as Assistant Teacher. Being senior in the grade the petitioner was entitled to be promoted in Lecturer Grade, however ignoring his candidature the District Inspector of Schools, Haridwar vide order dated 17.03.1992 accorded approval to the promotion of respondent no. 4 on the post of Lecture.

It is submitted that at present the petitioner has been retired from his services.

Learned Standing Counsel on the contrary has contended that the post of Lecturer Grade fell vacant on 30.06.1991 in the Institution. The petitioner was not qualified for promotion as per Regulations on the date of vacancy as required under Regulation-6 Chapter-II of the U.P. Intermediate Education Act

1921. Chapter-II, Regulation-6 of the U.P. Intermediate Education Act, 1921 reads as under:-

"6. (1).Where any vacancy in the Lecturer's grade or in the L.T. Grade as determined under Regulation 5, is to be filled by promotion, all teachers working in the L.T. or the C.T. Grade, as the case may be, having a minimum of five years continuous substantive service to their credit on the date of occurrence of the vacancy shall be considered for promotion by the Committee of Management without their having to apply for the same provided they possess the prescribed minimum qualifications for teaching the subject in which the teacher in the lecturer's grade or in the L.T. Grade is required."

In the forgoing circumstances, the petitioner lacks merit and is liable to be dismissed, however the petitioner may prefer representation before the District Education Officer concerned for redressal of his grievances.

Learned counsel for the petitioner has further submitted that the respondent no. 4 was also not entitled for being promoted in the Lecturer Grade. Thus, disputed question of facts has arisen in this matter, which cannot be decided by this Court under Article 226 of Constitution of India. In the circumstances, I deem it just and proper to direct District Education Officer, Haridwar to take decision on the representation of the petitioner, if any moved by him, within a period of 6 weeks from the date of production of a certified copy of this order before him.

With the above directions, the writ petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.)

August 7, 2007:
NCM: